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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**  
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Mumbai- 400 005

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F.No. 195/127/14-RA / 1520      Date of Issue: 01.03.2021

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ORDER NO. 95 /2021-CX (WZ) /ASRA/MUMBAI DATED 24.02.2021  
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 CENTRAL  
EXCISE ACT,1944.

Applicant : M/s. Amoli Organics Pvt. Ltd.

Respondent: Commissioner of Central Excise & Customs(Appeals), Surat-II

Subject : Revision Applications filed, under Section 35EE of Central  
Excise Act, 1944 against Order-in-Appeal No. DMN-EXCUS-  
000-APP-295-13-14 dated 08.01.2014 passed by the  
Commissioner of Central Excise, Customs & Service  
Tax(Appeals), Daman.

**ORDER**

This Revision Application has been filed by M/s. Amoli Organics Pvt. Ltd., 22/4, 40 Shed Rea, GIDC, Vapi, Gujarat - 396 195 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. DMN-EXCUS-000-APP-295-13-14 dated 08.01.2014 passed by the Commissioner of Central Excise, Customs & Service Tax(Appeals), Daman.

2. The case in brief is that the Applicant, manufacturer had filed rebate claim of Rs 1,57,466/- dated in respect of ARE-1 No. Vapi-IV/R-125/12-13 dated 26.06.2012 under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The Assistant Commissioner), Central Excise, Customs & Service Tax, Div-Vapi-I, Daman Commissionerate observed that the Applicant had not submitted the Original and Duplicate copy of the said ARE-1 and therefore vide Order-in-Original No. VAPI-I/Rebate/239/13-14 dated 09.10.2013 rejected the refund claims under Section 11B of Central Excise Act, 1944. Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise, Customs & Service Tax(Appeals), Daman. The Commissioner(Appeals) vide Order-in-Appeal No. DMN-EXCUS-000-APP-295-13-14 dated 08.01.2014 rejected their appeal and upheld the Order-in-Original dated 09.10.2013.

3. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) The Applicant had submitted the re-constructed copy of Original and Duplicate copy of ARE-1 as per provision of Board's Circular No. 17/17-CX-II/51 dated 23.05.1955 duly endorsed/certified by the jurisdictional Central Excise Authorities as regard Part 'B' from Superintendent of Customs who had passed the Shipping Bills and allowed the export. It is clearly evident from Para 4 of the impugned Order-in-Appeal that the Applicant had submitted the re-constructed

copy of the of Vapi-IV/R-125/12-13 dated 26.06.2012 before the Commissioner(Appeals).

- (ii) It is important to note that the Officers of Customs who had allowed the consignment to clear from the factory and for export are the same ones who had certified and endorsed the reconstructed copy of the Vapi-IV/R-125/12-13 dated 26.06.2012.
- (iii) There are so many other collateral documents available which was sufficient to conclude that the goods which was cleared from the factory of the Applicant had been exported out of India i.e. Central Excise Invoice, Commercial Invoice, Packing List, Shipping Bills, Bill of Lading, BRC, Triplicate copy of ARE-1, etc. Further for the genuiness of the export, the rebate sanctioning authority is also empowered to make enquiry from the Customs as well as Central Excise Authority. Hence, without taking the reasonable steps to give the justice to the trade, rejection of the rebate claim was against the relevant rules and regulation.
- (iv) The Original and Duplicate copy of ARE-1 was misplaced in the Customs House during transfer of files and the relevant Officers were ready to certify the re-constructed copy of the same as they knew the fact of misplacement of the documents. Before endorsement of the said re-constructed copy, the officers did not demand any FIR and any bonds towards the same, hence the Applicant re-constructed copy and submitted before the relevant Customs as well as Excise officers and the officers endorsed the said ARE-1 without any FIR. Hence, when the officers who has endorsed the re-constructed copy of ARE-1 had not asked about the FIR, the reason taken by the Commissioner(Appeals) for non availability of FIR is baseless and illogical.
- (v) The goods were cleared from their factory at Vapi and the ARE-1 had been prepared by Shri Afroz Alam, Central Excise Manager at their factory of stuffing i.e. Vapi and the said had been endorsed by the Central Excise Authority after which the goods send to the Customs House, Nhava Sheva for export. But as the Original and Duplicate

copy of the ARE-1 had been misplaced in the Customs House, the re-constructed copy of ARE-1 was signed by Shri C.S. Deolkar, General International of the Applicant. It is important to note that both the persons were declared as Authorized Signatory of the Applicant in the Central Excise and Customs. Hence signing on the re-constructed copy by another authorized signatory of the same Applicant does not make any changes in the genuineness of the documents as the re-constructed copy which was endorsed by the Customs officer does not contain different values or specification than the Original one.

- (vi) There are catena of judgments passed by the Revisionary Authority which has held that in the absence of the original and duplicate copy of the ARE-1, the rebate sanctioning authority has to rely on the collateral evidence. In this they relied on few case laws.
- (vii) The grounds taken by both the lower authorities are only technical in nature on the basis of which the legitimate claim of Applicant cannot be rejected.
- (viii) The Applicant prayed that the impugned Order-in-Appeal and Order-in-Original be set aside and the hold that the Applicant are entitled for rebate under Rule 18 of Central Excise Rules, 2002 on exported goods extent to the duty paid in absence of Original copy of Original and Duplicate copy of ARE-1.

4. Personal Hearing was held on 05.12.2019. Shri D.K. Singh, Advocate appeared on behalf of the Applicant. The Applicant submitted that the original copy of the ARE-1 could not be produced before the original authority. The reconstructed copy was not accepted by the Commissioner(Appeals) and it was endorsed by Customs. However, there was a change in the Revisionary Authority, hence a final hearing was granted on 29.01.2021. Shri Dharmendra K Singh, Advocate appeared on behalf of the Applicant. He appeared online and reiterated his written submission. He submitted that they were not given opportunity to submit required documents. He further submitted that procedural infractions cannot take away substantive right if duty payment and export of goods is

not in doubt. He informed that a written submission dated 28.01.2021 has been mailed.

5. The Applicant in their written submission submitted the following:
- (i) FIR is required for showing genuineness of loss of documents and to produce before the Customs officer for re-construction of ARE-1. However, being genuine case the department had allowed the Applicant without FIR and re-constructed the lost copy of Original/Duplicate ARE-1.
  - (ii) At the time of clearance of export goods relevant ARE-1 was signed by Shri Afroz Alam, the Central Excise Manager of Applicant at factory. However, at the time of Re-construction of the ARE-1 at Nhava Sheva, the same had been signed by Shri C.S. Deolkar, General Manager International of the Applicant who sits in Mumbai Office. However, authorization details of both the persons were already provided to the lower authority.
  - (iii) The lower authority had not granted them any opportunity to produce the re-constructed copy of the ARE-1 as no Deficiency notice/Show Cause Notice/Personal Hearing in the matter was issued to them
  - (iv) The Commissioner(Appeals) had relied on the judgment in case of M/s Varindra Overseas Ltd [2012 (282) ELT 129 (GO)]. wherein the claimant had not submitted Original/Duplicate copy of ARE-1 even not submitted re-constructed copy of ARE-1 also. However, in the Applicant's case they had submitted the re-constructed copy which was duly attested and certified by Customs Officer. Here they relied in the GOI Order No. 1243/10-CX dated 26.07.2010 in case of M/s Union Quantity Plastics, Mumbai and also relying upon the judgment passed by the Hon;ble Bombay High Court in the matter of M/s U.M. Cables Vs UOI [2013 (293) ELT 641 (Bom)] vide which the Hon'ble

High Court has held Non-production of original and duplicate copy of ARE-1 ipso fact, it cannot invalidate rebate claim.

- (v) In regard to the judgment relied by the Commissioner(Appeals) in the matter of Zandu Chemicals Ltd [2-13(297) ELT 145 (GOI)], the Applicant submitted that the said decision is reversed by the Hon'ble Bombay High Court vide its Order dated 24.09.2014 in W.P. No. 9269 of 2013 [2015 (313) ELT 520 (Bom.)]. However, while reversing the judgment of the Hon'ble Joint Secretary (RA), the Hon'ble High Court has ruled as under :

*"Para 10....If there is material on record which shows compliance with such procedural requirement as furnishing of ARE-1 form original or duplicate and there is other proof of exports of the goods then, insistence on compliance with the filing of original or duplicate ARE-1 was totally uncalled for and unjustified."*

- (vi) The Applicant requested to consider the submission while deciding the matter.

6. 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.

7. On perusal of the records, it is observed that the Applicant, manufacturer in support of their rebate claim of Rs. 1,57,466 dated 16.05.2013 had produced the following documents:

- (i) Form "C";
- (ii) Triplicate copy of ARE-1 No. Vapi-IV/R-125/12-13 dated 26.06.2012;
- (iii) Duplicate copy of Central Excise Invoice
- (iv) Copy of Shipping Bill No. 9565942 dated 26.06.2012;
- (v) Copy of Bill of Lading No. SMUM0712112059 dated 02.07.2012;
- (vi) Copy of RG 23 A Part-II Account Debit Entry No. 282 dated 26.06.2012
- (vii) Declaration.

The Applicant submitted that the lower authority had not granted them any opportunity to produce the re-constructed copy of the ARE-1 as no Deficiency notice/Show Cause Notice/Personal Hearing in the matter was issued to them. Government finds that the impugned Order-in-Original dated 09.10.2013 was passed without giving an opportunity of hearing to the Applicant and therefore it amounts to violation of principle of natural justice.

8. The Commissioner(Appeals) had rejected the Applicant's rebate claims for non-furnishing of Original and Duplicate copies of ARE-1 No. Vapi-IV/R-125/12-13 dated 26.06.2012. The Applicant submitted "*...as the copy of Original and Duplicate copy of ARE-1 was misplaced in the Customs House during transfer of files and the relevant Officers were ready to certify the Re-constructed copy of the same as they knew the fact of misplacement of the documents. However, before endorsement of the said Re-constructed copy, the officers did not demand any FIR and any bonds towards the same, hence, the applicant re-constructed the copy on the same and submit before the relevant Customs as well as Excise officers for the endorsement and the officers endorsed the said ARE-1 subsequently without any FIR...*". Government notes that evidence of duty payment and export of goods have been submitted by them and it was not disputed by rebate sanctioning authority. Rebate claim had been rejected only on technical grounds. Government finds that there are catena of judgments stating that substantive benefits cannot be denied on mere procedural lapse.

9. In this regard it is noticed that while deciding an identical issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), observed at para 16 as under :-

"16. *However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that*

*the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise - 2009 (233) E.L.T. 367, Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise - 2007 (217) E.L.T. 264 and Commissioner of Central Excise v. TISCO - 2003 (156) E.L.T. 777.*

10. Further, the Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relied on afore stated order of Hon'ble High Court of Bombay.

11. Government finds that rationale of aforesaid Hon'ble High Court orders is squarely applicable to the issue in question. Government in the instant case notes that the Original and Duplicate copy of ARE-1 No. Vapi-IV/R-125/12-13 dated 26.06.2012 were misplaced/lost in the Custom House. On the face of the Triplicate copy it shows two ARE-1 nos i.e.

- (i) ARE-1 No. Vapi-IV/R-657/12-13 dated 26.06.2012 and



(ii) ARE-1 No. Vapi-IV/R-125/12-13 dated 27.06.2012.

Further it shows "WITHOUT SEALING AND SUPERVISION", debit entry in "Cenvat Account Entry No. 282" duly signed by the Superintendent and Inspector of Central Excise on 27.06.2012. The Re-constructed Original and Duplicate copy of ARE-1 No. 657 dated 26.06.2012 PART B shows Shipping Bill No. 9565942 dated 26.6.12 by S.S No. *Hyundai Stride, Bangkok, 07.07.12* and *M.R. No. 523/07.07.12* duly signed by Superintendent of Customs. The Shipping Bill No. 9565942 dated 26.06.2012 shows the Vessel Name : HYUNDAI STRIDE, ARE-1 No. 657 dated 26.06.2012 and Let No. MR No. 523 dated 7.7.12 duly signed by the Superintendent of Customs. Bill of lading No. *SMU/M0712112059 dated 02.07.2012* shows Port of Discharge : "BANGKOK", Means of Transport : "*Hyundai Stride*", Invoice No. 2012-13/EXP/EVX/00173/01, S/Bill No: 9565942 DT 26.06.2012. Further the debit in the RG 23A Part-II Sr.No. 282 dated 26.06.2012 shows ARE-1 No. 657 and the Directorate General of Foreign Trade had issued the statement of Bank Realization which shows the Shipping Bill No.: '9565942', Shipping Bill Date : "26.06.2012" and date of realization of money by bank : "03.10.2012". The Applicant then filed the rebate claim of Rs. 1,57,466/- dated 16.05.2013 in respect of ARE-1 No. Vapi-IV/R-125/12-13 dated 26.06.2012.

12. Therefore the documents furnished by the Applicant indisputably prove that duty paid goods under claim for rebate have been exported and hence the rebate claim should not have been denied only on grounds of non-production of original and duplicate copy of ARE-1. It is incumbent upon the adjudicating authority to verify the documentary evidences furnished by the Applicant as resorting rejection on technical grounds/procedural lapses would not serve the purpose of justice.

13. With the above observations, Government remands the matter to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claims for rebate on the basis of the aforesaid documents submitted by the Applicant. After satisfying the authenticity of those documents, and the fact of export of duty paid goods,

the original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

14. In view of above, Government sets aside the impugned Order-in-Appeal No. DMN-EXCUS-000-APP-295-13-14 dated 08.01.2014 passed by the Commissioner of Central Excise, Customs & Service Tax(Appeals), Daman and the matter is remanded to the Original Adjudicating Authority.

15. The revision application is allowed in above terms.

*Shrawan*  
*24/02/21*  
(SHRAWAN KUMAR)

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

ORDER No 95/2021-CX (WZ) /ASRA/Mumbai Dated 24.02.2021

To,  
M/s. Amoli Organics Pvt. Ltd.,  
22/4, 40 Shed Rea,  
GIDC, Vapi,  
Gujarat - 396 195.

Copy to:

1. The Commissioner of CGST, Daman, 2<sup>nd</sup> floor, Hani's Handmark, Vapi  
Daman Road, Chala, Vapi - 396 191.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.
4. Spare Copy