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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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005**

F NO. 195/473/16-RA

Date of Issue: 13.10.22

ORDER NO. 981 /2022-CEX (WZ)/ASRA/MUMBAI  
DATED 11.10.2022 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. Henkel Adhesive Technologies Pvt. Ltd.

Respondent : Principal Commissioner of CGST Belapur.

Subject : Revision Application filed, under section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. -  
CD/298/BEL/2016 dated 07.04.2016 passed by the  
Commissioner(Appeals),Central Excise ,Mumbai.

**ORDER**

This Revision Application has been filed by M/s. Henkel Adhesive Technologies Pvt. Ltd. Situated at Plot No. D-73/2, D-74/2 & 76/6 TTC Industrial Area, MIDC Turbhe Naka, Thane- Belapur Road, Navi Mumbai-400613 (hereinafter referred to as "Applicant") against the Order-in-Appeal No. -CD/298/BEL/2016 dated 07.04.2016 passed by the Commissioner (Appeals) , Central Excise ,Mumbai.

2. Brief facts of the case are that the Applicant, a manufacturer exporter manufacturing excisable goods falling under chapter 32 of Central Excise Tariff Act, 1985, had removed their excisable goods from their factory premises under Self Removal Procedure and under claim of rebate in terms of Rule 18 of the Central Excise Rules, 2002, read with Notification No.19/2004 Central Excise (N.T.) dated 06.09.2004. During scrutiny of the rebate claims it was noticed that the Applicant had not submitted the Triplicate (Pink) Copies of the ARE-1s in respect of impugned rebate claims. The Applicant was requested to submit necessary documents, along with copies of duty payment verification certificate i.e.RG-23 register duly verified by the jurisdictional Range Superintendent. The Applicant did not submit the same, contravening the provision of Notification No.19/2004-Central Excise (N.T.). issued under Rule 18 of the Central Excise Rules, 2002. Accordingly, SCN was issued to the Applicant which has been adjudicated vide OIO No. 109(R)15-16 dated 30.07.2015 rejecting all the rebate claims on the ground that the authenticity of duty payment particulars cannot be ascertained in the absence of triplicate copies. Aggrieved by the OIO, the Applicant filed appeal with the Commissioner (Appeals), Central Excise, Mumbai, who vide Order-in-Appeal No. Order-in-Appeal No. - CD/298/BEL/2016 dated 07.04.2016 rejected their appeal and upheld the OIO.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds that:

- i. The first conclusion of the adjudicating authority that "the authenticity of the duty payment particulars cannot be ascertained by this office" is incorrect in as much for verification of duty payments, the rebate sanctioning authority have called for the RG 23 Part II register (the register maintained for payment of duties through CENVAT credits) and the same have been verified by him before passing the Order. There is no case that the said register has not been produced nor the duties are not paid. The submission of the same has been acknowledged at para 2(c) of the Order in Original No. 109(R)15-16 dt.30.07.2015 dated 30.07.2015.
- ii. The Assistant Commissioner in his order at para 15.3(I) found that: "triplicate copies of the ARE-1s mentioned above were not submitted to the Jurisdictional Range Superintendent within 24 hrs. as required to be produced as per the provisions of Noti. 19/2004- Central Excise (NT) dated 06.09.2004". This observation is also outside the purview of the fact in as much as the Applicant have submitted the copies of ARE-1 (triplicate, quadruplicate and additional copies) within 24 hrs. of the export clearances. The copies of the acknowledged receipts with Range Superintendent's remarks asking to produce RG 23 Part II register for verification of duty payments were produced to the office of rebate sanctioning authority. Further it is not the issue of dispute that these are not submitted to the Range Superintendent. Thus, the observation drawn in the order is not factual.
- iii. Applicant reproduce the para no. 17 of the order in Original viz.

"Thus I find that in absence of the triplicate copy the authenticity of the duty payment particulars cannot be ascertained by this office and since, rebate claimed by the claimant do not satisfied the criteria/procedure laid down under the provisions of Notification No. 19/2004 Central Excise (NT) dated 06.09.2004 cannot be processed for sanction by this office."

The contention viz. "do not satisfied the criteria/procedure laid down" is of procedural nature. In this connection applicant relied on the

judgment of the Govt. of India vide Order no. 382/09 dated 27.10.09 in case of M/s Unichem Laboratories Ltd. Mumbai.

- iv. As per the Government's Order No. 1565/2010 CX dated 12.10.2010 in case of GARG TEX-O-FAB PVT. LTD, cited at 2011(271)ELT449(GO1), is very clear and says in specific words viz. "Instead of rejecting the rebate claims for non-submission of original documents, the original authority should have considered collateral evidence to verify whether duty paid goods have actually been exported or not as per provisions of C.B.E. & C.'s Central Excise Manual of Supplementary Instructions"
- v. The applicant has submitted the collateral evidences to verify whether duty paid goods have actually been exported; the Order in Original itself indicates the proof of having submitted the collateral evidences of the duty paid on the goods and the same have been exported; as such their rebate claims merit for sanction accordingly it is requested to sanction the same and oblige.
- vi. It was submitted during the course of Personal Hearing on 17.7.15 that the triplicate copies of the ARE-1s had been lost while travelling in local train from Thane to Belapur on 16.7.15, the complaint to this effect was filed with the Panvel Police Station and copy of the certificate issued by the Police Station was produced. The Assistant Commissioner has acknowledged this fact in Para 15.1 of his Order in original dated 30.7.15. In this connection this is to submit that the lost documents (triplicate and quadruplicate copies of the ARE1s) have been dropped in company's letter box by someone who has found it few days ago and are ready for submission; copies of the same are submitted along with this application for kind perusal. As such the allegation of non-submission would be washed away; only point of endorsing the same by the Range Supdt. will remain which can be done under the instructions of the rebate sanctioning authority; as such their rebate claims merit for sanction accordingly it is requested to sanction the same and oblige;

vii. In view of above, applicant requested to set aside the order in appeal and to pass an order granting consequential relief by way of sanctioning the rebates as claimed with interest.

4. Personal hearing in the matter was fixed on 28.06.2022, Shri Nazir K. Shaikh, Advocate appeared on behalf of the Respondent for the hearing and reiterated their earlier submission. He submitted that his claim has been rejected merely because triplicate copies of ARE1s were not submitted, though the same were subsequently submitted but no cognizance of the same has been taken. He contended that there being no dispute on export of duty paid goods, their claim deserves to be sanctioned as procedural infractions cannot take away their substantive right.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.

6. On perusal of the records, Government finds the issue to be decided in the instant case is whether rebate claims filed by the applicant has been correctly rejected due to the non-submission of triplicate copies under rule 18 of the Central Excise Rules,2002 read with Notification No. 19/2004CE (NT) dated 6.9.2004.

7. With regards to the claim of rebate, the Government notes paragraph 8.4 of the Manual of Instructions issued by the CBEC 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. The second is that the goods are of a duty paid character. 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.

8. The Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods.

9. The contention of the Department is that the duty payment character of the goods cannot be established in the absence of triplicate copies. The Government, holds that non-submission of verified triplicate copy 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, as a matter of fact, 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.

11. 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. v. 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"*

12. In their judgment of Bombay High Court in case of UM Cables Ltd v/s Union of India-2013 (290) ELT 641 (HC-Bom) as relied upon by the applicant held that:

*'non production of original and duplicate ARE-I ipso facto cannot invalidate the rebate claim. In such a case the exporter can demonstrate by cogent evidence that goods were exported and duty paid, satisfying the requirement of Notification No. 19/2004 CE (NT). On facts claim directed be considered on the basis of bill of lading, bankers certificate and inward remittance of export proceeds and certification from Customs authorities on ARE-I'*

In the above said case, the exporter had failed to submit original and duplicate copy of ARE-1 while other export documents evidencing the "facts of exports" were submitted under rebate under Notification No. 19/2004 CE (NT). However, the lower authorities rejected the rebate claim for non-submission of Original and Duplicate copy of ARE-1 duly signed by the Central Excise officers for verification of goods exported. The ratio of the said judgment is squarely applicable in the instant case.

13. In view of above, Government observes that later the objection raised in the OIA has been resolved by way of producing the lost triplicate copies of ARE-1s by the applicant. Even otherwise, the rebate claim in question cannot be denied merely on technical/procedural lapses. The matter is remanded back to the adjudicating authority for sanctioning of rebate claims subject to establishing veracity of the facts of duty payment by corroborating with the documents like triplicate copies of ARE-1s, Excise returns, RG-23 A register etc.

14. Revision application is disposed off in above terms.

*Shrawan*  
24/10/22  
(SHRAWAN KUMAR)

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

ORDER No. 981 /2022-CEX (WZ) /ASRA/Mumbai Dated 11.10.2022

To,

1. M/s. Henkel Adhesive Technologies Pvt. Ltd. Plot No. D-73/2, D-74/2 & 76/6 TTC Industrial Area, MIDC Turbhe Naka, Thane- Belapur Road, Navi Mumbai-400613.
2. The Principal Commissioner CGST & CX, Belapur Commissionerate.

Copy to:

1. The Commissioner (Appeals), Central Excise, 3<sup>rd</sup> Floor, Utpad Shulk Bhavan, Plot No. C-24, Section-E, BKC, Bandra(E), Mumbai-400051.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.