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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.195/03/2016-RA | 16025

Date of Issue: 27.10.2022

ORDER NO. 986 /2022-CX (WZ)/ASRA/MUMBAI DATED 20.10.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT,
1944.

Applicants : M/s Wartsila India Private Limited,
Gate No. 1, Opp Govt Rest House,
Old Mumbai Pune Road, Shilphata,
Khopoli, District Raigad 410 203

Respondents : The Commissioner, Central Excise, Raigad

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
CD/667RGD/15 dated 26.06.2015 passed by the Commissioner
of Central Excise (Appeals), Mumbai Zone II.

ORDER

This Revision Application is filed by M/s Wartsila India Private Limited, Gate No 1, Opp. Govt. Rest House, Old Mumbai Pune Road, Shilphata, Khopoli, District Raigad 421 203 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. CD/667RGD/15 dated 26.06.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone II.

2. The facts of the case briefly stated are that the applicant who was registered with Central Excise was engaged in the manufacture of 'parts of D.G.Sets' falling under Chapter 85 of the CETA, 1985. The applicant had filed three online rebate claims amounting to Rs. 54,32,587/-, alongwith the prescribed documents, in respect of goods exported as a manufacturer exporter, under Rule 18 of the Central Excise Rules, 2002 read with Notification No 19/2004-CE (NT) dated 06.09.2004. On scrutiny it was noticed that the applicant had not fulfilled the condition No. 2(b) of Notification No 19/2004-CE(NT) dated 06.09.2004, as the goods were exported after a period of six months from the date on which it was cleared from the factory and also had not produced any documents regarding grant of extended period by the Commissioner. Pursuant to issue of show cause notice, the original authority vide Order-in-Original No Raigad/KPL/RC/1776/2014-15 dated 24.11.2014 rejected the rebate claims in terms of Notification No 19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of the Central Excise Act, 1944.

3. Being aggrieved, the applicant filed an appeal before the Commissioner of Central Excise(Appeals), Mumbai Zone-III. The Appellate Authority vide Order-in-Appeal No CD/667/RGD/15 dated 26.06.2015 on the grounds that the applicant had neither exported the goods within the prescribed time nor had produced any extension of time limit from the jurisdictional Commissioner. The Appellate Authority held that the departmental authorities were bound by Circulars/instructions issued by the Central Board

of Excise and Customs and had to comply with the same as held in the case of M/s Paper Products Ltd vs. CCE [1999 (112) E.L.T. 765(SC)]. The Appellate Authority also relied on the decision of the Revisionary Authority in the case of M/s Swift Laboratories Ltd [2014 (312) E.L.T. 865(GOI)]

5. Aggrieved by the said Order-in-Appeal, the applicant filed the instant Revision Application on the following grounds

5.1. That the Appellate Authority ought to have appreciated that there was no dispute regarding correlation between goods cleared from their unit where they were manufactured and the goods which were ultimately exported;

5.2. That it was a fit case for the Commissioner to exercise his discretion in terms of Para 2(b) of the said Notification and extend the period of limitation for effecting exports as the exports had been effected and foreign exchange against the same was received within 6 months;

5.3. That the Appellate Authority had passed the impugned order by reading only the first part of condition 2(b) without even discussing the option of exercising the latter part of the said condition. The impugned order is therefore, non-speaking and deserves to be set aside on this ground alone;

5.4. That the time limit of six months prescribed in the said Notification was not rigid but flexible inasmuch as the notification itself provided that the same can be extended by the Commissioner of Central Excise and in the instant case, the delay was not inordinate being only of 23 days;

5.5. That the delay in the instant case was bona fide inasmuch as it was at the behest of the customer that the goods were moved to the buffer yard post excise clearance;

5.6. That the Appellate Authority failed to appreciate the Order of the Hon'ble Calcutta High Court in Kosmos Healthcare Pvt. Ltd. vs. Asst. Commr. Of C.Ex., Kolkata-1-2013 (297) E.L.T. 345 (Cal.) wherein the Hon'ble High

Court while dealing with a case of rejection of rebate claimed under Notification No.19/2004-C.E. held that when there is proof of export, the time stipulation of six months to carry out export should not be construed within pedantic rigidity. The Hon'ble High Court further held that unless the delay was inordinate or it was a case where the delay had caused loss of revenue to the Government or in a case where there was reason to believe that export had been delayed deliberately with ulterior intention, delay ought to be condoned;

5.7. That the Appellate Authority failed to appreciate that the reliance placed by the Deputy Commissioner on the decisions in the case of Kirloskar brothers was clearly distinguishable from the facts of the present case, since the issue of time limit as in the present case is not discussed in the decisions;

5.8. That the applicant had complied with all the conditions as specified in the Notification 19/2004 except for a marginal delay in complying with the time limit prescribed for export and such marginal delay can at best be termed as a procedural infraction for which the substantive benefit of rebate ought not to be denied. Reliance was placed on the order of this Hon'ble Authority in the case of Modern Process Printers -- [2006 (204) ELT 632 (GOI)]

5.9. That the Appellate Authority failed to appreciate settled law that substantive benefit ought not to be denied for mere technical/procedural violations. Reliance was placed on the judgment in the case of Formica India v. Collector of Central Excise, [1995 (77) E.L.T. 511 (S.C.)];

5.10. Reliance was also placed on the following cases:-

- (i) Shreyas Packaging - 2013 (297) ELT 476 (GOI)
- (ii) Ind-swift Laboratories Ltd. - 2014 (312) E.L.T. 865 (G.O.I.)

The applicant requested to set aside the impugned Order-in-Appeal dated 26.06.2015 and allow the rebate claims totalling to Rs.54,32,537/- with consequential relief

6. Personal hearing in this case was scheduled for 21.06.2022 or 05.07.2022 Shri Suyog Bhave, Advocate appeared online for the hearing, on behalf of the applicant and submitted that their application for extension of time of six months of export (though filed in December 2014 after eight months of export) has not been decided, therefore he requested to allow the claims. He submitted further written submissions.

6.1. The written submission are a reiteration of the earlier grounds and copies of the case laws cited by the applicant.

7. Government has carefully gone through the relevant case records available in case files, and perused the impugned Order-in-Original and Order-in-Appeal.

7.1 On perusal of records, Government observes that the applicant had cleared goods for export under three ARE-1's and filed rebate claims totaling to Rs. 54,32,537/-, on 27.08.2014. The rebate claims were rejected by the original authority as it was observed that the goods in respect of the three ARE-1's were removed from the factory for export on 04.09.2013 and as per the date of the 'mates receipt' the goods were exported on 12.04.2014 and were hit by limitation prescribed under Rule 18 of the Central Excise Rules, 2002, as the goods were exported beyond six months from the date of removal from the factory. The Appellate Authority rejected the appeal of the applicant.

7.2 Government notes that the applicant has reasoned that there was no dispute regarding correlation between goods cleared from their unit where they were manufactured and the goods which were ultimately exported and the time limit of 6 months prescribed in the said Notification was not rigid but flexible as the Notification itself provides that the same can be extended by the Commissioner of Central Excise and in the instant case, the delay was only of 23 days and that the Appellate Authority had decided the case without discussing the option of exercising the option pertaining to the extension of the period of six months. The applicant has also averred that the delay being

marginal, at best can be termed as procedural infraction for which benefit of rebate should not be denied.

7.3. Government finds that the contention of the applicant that delay on their part is a procedural infraction of Notification/Circulars etc., and are to be condoned if exports have really taken place cannot be accepted in the instant matter. As per Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004, rebate of the whole of the duty paid on all excisable goods exported to any country is to be granted subject to specified conditions, limitations and procedures. Rule 18 of the Central Excise Rules, 2002, whereunder said Notification is issued, also specifies it:

***Rebate of duty.** — Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.*

Thus, a specified condition is required to be mandatorily complied with and its non-adherence cannot be condoned as a procedural lapse.

7.4. Government notes that there are a catena of orders of Government of India wherein it is held that the limiting condition of goods to be exported within six months of clearance from the factory and requirement of permission by authority for extension of time, is a statutory and mandatory condition under Notification No. 19/2004-C.E. dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 and as a result, rebate is not allowed for violation of the said mandatory conditions.

7.5. In the Order No. 1228/2011-CX, dated 20.09.2011 of Kosmos Healthcare Pvt. Ltd. [2013 (297) E.L.T. 465 (G.O.I.)], Government notes that the rebate claim was denied on the grounds that "Clause 2(b) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 stipulates that the excisable goods shall be

exported within six months from the date on which they were cleared for export from the factory of manufacture, which has been violated by the applicant; that they had not made any application for extension of time-limit before proper authority; that they had not produced any permission granting extension of time limit from competent authority till date; that the non-compliance of a substantive condition of Notification cannot be treated as a procedural lapse to be condoned". This Order No. 1228/2011-CX, dated 20-9-2011 was challenged by Kosmos Healthcare Pvt. Ltd. before Hon'ble High Court Calcutta vide Writ Petition No. 12337(W) of 2012. 2013 (297) E.L.T. 345 (Cal.)

7.6. The Hon'ble High Court Calcutta while remanding back the case to the Revisionary Authority vide its Order dated 19.09.2012 observed as under:

"21. On a reading of the Notification No. 40/2001 there is nothing to show that the time stipulation cannot be extended retrospectively, after the export, having regard to the facts of a particular case. The benefit of drawback has, in numerous case, been allowed notwithstanding the delay in export. This in itself shows that the respondent authorities have proceeded on the basis that the time stipulation of six months is not inflexible and the time stipulation can be condoned even at the time of consideration of an application for refund/drawback.

....

....

28. When there is proof of export, as in the instant case, the time stipulation of six months to carry out export should not be construed within pedantic rigidity. In this case, the delay is only of about two months. The Commissioner should have considered the reasons for the delay in a liberal manner.

29. It would perhaps be pertinent to note that an exporter does not ordinarily stand to gain by delaying export. Compelling reasons such as delay in finalization and confirmation of export orders, cancellation of export orders and the time consumed in securing export orders/fresh export orders delay exports.

30. As observed above, the notification does not require that extension of time to carry out the export should be granted in advance, prior to the export. The Commissioner may post facto grant extension of time.

31. What is important is, the reason for delay. Even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed. If there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended. In my view, in considering the causes of delay, the

Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports.

32. Of course, in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is reason to believe that export has been delayed deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned.

33. The impugned revisional order is set aside and quashed. The Respondent No. 3 is directed to decide the revisional application afresh in the light of the observations made above."

7.7. Upon perusal of Order Hon'ble High Court Calcutta referred supra, Government observes that Hon'ble High Court has interalia observed that the "Notification No.40/2001 does not require that extension of time to carry out the export should be granted in advance, prior to the export; that the Commissioner may post facto grant extension of time; that what is important is, the reason for delay; that even after export extension of time may be granted on the same considerations on which a prior application for extension of time to carry out export is allowed; that if there is sufficient cause for the delay, the delay will have to be condoned, and the time for export will have to be extended; that in considering the causes of delay, the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports". Government further observes that the Hon'ble High Court in the order has further noted that, "in a case of inordinate unexplained delay or a case where the delay has caused loss of revenue to the Government or in a case where there is reason to believe that export has been delayed deliberately with ulterior intention, for example, for higher gain in anticipation price variation, the delay may not be condoned".

8. Further, Government finds it pertinent to reproduce the relevant part of the Order of Hon'ble High Court of Judicature at Bombay dated 15.09.2014 dismissing the Writ Petition No. 3388 of 2013, filed by M/s Cadila Health Care Limited [2015 (320) E.L.T. 287 (Bom.)] and upholding the Order-in-Original dated 23.12.2009 which is as under:-

2. The concurrent orders are challenged on the ground that there was compliance with the notification and particularly the condition therein of export from the factory of manufacturer or warehouse. Though Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6th September, 2004 requires that

the excisable goods shall be exported within six months from the date on which it were cleared for export from the factory of manufacture or warehouse, Mr. Shah would submit that the condition is satisfied if the time is extended and it is capable of being extended further by the Commissioner of Central Excise. In the present case, the power to grant extension was in fact invoked. Merely because the extension could not be produced before the authority dealing with the refund/rebate claim does not mean that the claim is liable to be rejected only on such formal ground. The notification itself talks of a condition of this nature as capable of being substantially complied with. The authority dealing with the claim for refund/rebate could have itself invoked the further power and granted reasonable extension.

3. *We are unable to agree because in the facts and circumstances of the present case the goods have been cleared for export from the factory on 31st January, 2005. They were not exported within stipulated time limit of six months. The application was filed with the Jurisdictional Deputy Commissioner of Central Excise/Assistant Commissioner of Central Excise much after six months, namely, 17th June, 2005 and extension was prayed for three months upto 31st October, 2005. The goods have been exported not relying upon any such extension but during the pendency of the application for extension. The precise date of export is 9th September, 2005. The Petitioners admitted their lapse and inability to produce the permission or grant of extension for further period of three months.*

4. *In such circumstances and going by the dates alone the rebate claim has been rightly rejected by the Maritime Commissioner (Rebate) Central Excise, Mumbai-III by his order which has been impugned in the writ petition. This order has been upheld throughout, namely, order-in-original dated 23rd December, 2009. The findings for upholding the same and in backdrop of the above admitted facts, cannot be said to be perverse and vitiated by any error of law apparent on the face of the record. There is no merit in the writ petition. It is accordingly dismissed.*

8.1 Government observes that in the said case, the Hon'ble High Court of Judicature at Bombay, in order dated 15.09.2014, while interpreting the amplitude of condition 2(b) of Notification No 19/2004 dated 06.09.2004 held that the Maritime Commissioner (Rebate), had rejected the rebate claim where permission granting extension could not be produced by the exporter. In spite of the fact that the petitioner in that case had tried to obtain permission from the Commissioner for extension of time limit of six months, their Lordships did not extend any relief.

8.2 Government observes that the aforesaid High Court order dated 15.09.2014 is a clear instance of treating Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 as a mandatory condition and certainly not a procedural requirement, and violation of which renders Rebate claims inadmissible.

Government observes that the aforesaid High Court order dated 15.09.2014 passed by the jurisdictional Court (which is also passed later to Hon'ble High Court Calcutta Order dated 19.09.2012 in Writ Petition No. 12337(W) of 2012 in case of M/s Kosmos Healthcare Pvt. Ltd. which is relied upon by the respondent) is a clear instance of treating Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002 as a mandatory condition and certainly not a procedural requirement, and violation of which renders Rebate claims inadmissible.

9. Government also relies on GOI Order No. 390/2013-CX dated 17-5-2013 [2014 (312) E.L.T. 865 (G.O.I.)] in Re: Ind Swift Laboratories Ltd. (also relied upon by the applicant) involving an identical issue wherein Government held as under:

9. Government notes that the Condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002 which reads as under :

"The excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow :"

As per the said provision, the goods are to be exported within 6 months from the date on which they are cleared for export from factory. The Commissioner has discretionary power to give extension of this period in deserving and genuine cases. In this case in fact such extension was not sought. It is obvious that the applicants have neither exported the goods within prescribed time nor have produced any extension of time limit permitted by competent authority. The said.

condition is a statutory and mandatory condition which has to be complied with. It cannot be treated as an only procedural requirement.

10. In light of above position, Government observes that the rebate claim is not admissible to the respondents for failure to comply the mandatory condition of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The respondents have categorically admitted that goods were exported after six months' time. They stated that they were in regular business with the buyer and in good faith, they provide him a credit period which is variable from consignment to consignment. As the buyer has not made the payment of an earlier consignment, therefore, they were left no option but to stop the instant consignment. The contention of the respondents is not tenable for purpose of granting rebate in terms of said Notification No.19/2004-C.E. (N.T.), dated 6-9-2004. Since rebate cannot be allowed when mandatory condition 2(b) laid down in Notification No.19/2004-C.E. (N.T.) is not complied with. Government accordingly sets aside the order of Commissioner (Appeals) and restores the impugned Order-in-Original."

10. Government takes note of the fact that the condition 2(b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 is not rigid and allows for some latitude to the exporter in that it provides them with the opportunity of approaching the jurisdictional Commissioner for extension of the prescribed time limit. In the instant case the applicant had applied for extension of time only on 22.12.2014, after the rejection of the rebate claim vide the impugned order. The applicant despite being an established manufacturer, had, instead of complying with the entire stipulated requirements, including an extension letter from the jurisdictional Commissioner of Central Excise, chose to file incomplete rebate claims before the original authority and there has been a failure on the part of the applicant in producing permission from the Commissioner for extension of time.

11. In view of the foregoing discussion and applying the rationale of case laws referred above, Government holds that the applicant is not entitled to rebate of duty in respect of goods not exported within the period of six months of clearance from the factory, in violation of condition No. 2(b) of the Notification No. 19/2004-C.E. (N.T.), dated 06-09-2004 issued under Rule 18 of the Central Excise Rules, 2002.

12. In view of the discussions above, Government does not find any infirmity in the Order-in-Appeal No. CD/667/RGD/15 dated 26.06.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone II and upholds the same.

13. The Revision Application is rejected as being devoid of merits.

Shrawan Kumar
20/10/22
(SHRAWAN KUMAR)

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

ORDER No. 986/2022-CX (WZ)/ASRA/Mumbai DATED 20.10.2022

To,
M/s Wartsila India Private Limited,
Gate No. 1, Opp Govt Rest House,
Old Mumbai Pune Road, Shilphata,
Khopoli, District Raigad 410 203

Copy to:

- 1) The Commissioner of CGST, Raigad, Plot No 1, Sector 17, Khandeshwar, Navi Mumbai 410 206
- 2) The Commissioner of CGST, Raigad Appeals, 5th Floor, C.G.O. Complex, Belapur, Navi Mumbai 400 614
- 3) Shri Suyog Bhave, Advocate, PDS Legal, 14, Mittal Chambers, 1st Floor, Nariman Point, Mumbai 400 021
- 4) Sr. P.S. to AS (RA), Mumbai
- 5) Notice Board
- 6) Spare Copy.