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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 198/191/16-RA / 6039 Date of Issue: 27.10.22

ORDER NO. 989 /2022-CEX (WZ)/ASRA/MUMBAI
DATED 26.10.2022 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 : Principal Commissioner of CGST Pune

Respondent : M/s. Parakh Agro Indutries Ltd.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. -PUN-SVTAX-000-APP-011-16-17 dated 05.04.2016 passed by the Commissioner(Appeals),Service Tax ,Pune.

ORDER

This Revision Application has been filed by Principal Commissioner of CGST Pune (hereinafter referred to as "Applicant") against the Order-in-Appeal No. SVTAX-000-APP-011-16-17 dated 05.04.2016 passed by the Commissioner(Appeals),Service Tax ,Pune.

2. Brief facts of the case are that M/s. Parakh Agro Indutries Ltd. (hereinafter referred to as "Respondent") are holders of Central Excise Registration No. AABCP0314LXM001 and are engaged in the manufacture of Multilayer Plastic Film. They had filed a claim for Rs.2,69,707/- claiming rebate of duty paid on the goods manufactured and cleared for exports by them under Rule 18 of Central Excise Rules, 2002 (hereinafter referred to as the Rules), read with Notification No. 19/2004-CE (NT) dated 06.09.2004. During scrutiny of the rebate claim, it was noticed that (i) The ARE-1, Mate Receipt & Original copy of the relevant shipping bill, were lost by the Respondent and they had lodged an FIR for the same in the jurisdictional police station, (ii) Duplicate copy of the ARE-1 was not received from the Customs authorities and it was not known whether the same was handed over to the Respondent in a tamper proof cover to be handed over to the rebate sanctioning authority, (iii) On the copy of the shipping bill, it is seen that the name of the Exporter is mentioned as Ms. ISF Industries Pvt. Ltd.& (iv) Customs Certificate has not been filled on the reverse side of copy of ARE-1. It was observed that the Respondent could not produce substantial evidence to prove that the goods cleared by them under the ARE-1 were actually exported, in terms of Rule 18 of the Rules read with Notification No. 19/2004-CE (NT) dated 06.09.2004. A show cause notice was issued to the Respondent asking them to show cause as to why the rebate claim should not be rejected, which was decided by the Adjudicating Authority by rejecting the rebate vide OIO R-94/CEX/2015-16 dated 28.10.2015. The Adjudicating Authority had concluded that there was no doubt that the goods were exported; that as the Respondent could not produce the Original & duplicate copies of the relevant ARE-1, which is a mandatory requirement, they were not eligible for the rebate of the duty paid on the

said export of goods. Aggrieved by the OIO, the Respondent filed appeal with the Commissioner(Appeals),Service Tax ,Pune who vide Order-in-Appeal No. SVTAX-000-APP-011-16-17 dated 05.04.2016 allowed their appeal and set aside the OIO. For review of the OIA a report was called from Divisional Assistant Commissioner to check from ARE-1 module of ACES whether the goods had indeed been exported as per Customs ICES database. The Divisional Assistant Commissioner has reported that as per ARE-1 No. 18 dated 18.06.2014 total quantity mentioned as exported is 13,066.51 Kg. (6,675.6 Kg. +6,390.75 Kg) however as per ICES records only 6,675.6 Kg quantity is exported as per Shipping Bill No. 3400619 dated 20.06.2014 against ARE-1 No.18 dated 18.06.2014.

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

i. The Respondent could not produce substantial evidence to prove that the entire goods cleared by them under the ARE-1 No. 18 dated 18.06.2014 were actually exported in terms of Rule 18 of the Rules read with the Notification No. 19/2004-CE (NT) dated 06.09.2004.

ii. As per provisions of Rule 18 read with Notification No. 19/2004-CE(NT) dated 06.09.2004, Respondent have to submit Original and Duplicate copy of ARE-1 (duly filled and signed PART B by relevant Customs Authority) for rebate claim and this is a mandatory requirement. They have not fulfilled this mandatory condition.

iii. The Respondent could not produce Original copy of Shipping Bill No. 3400619 dated 20.06.2014 and Original mate receipt No. 99163164 dated 23.06.2014.

iv. In view of the above mentioned statutory provisions the sanctioning of rebate of Rs.2,69,707/-was incorrect, since the goods manufactured and cleared for export by them under Rule 18 of Central Excise Rules, 2002, were not actually exported in toto.

v. Further, the Divisional Assistant Commissioner has reported that as per ARE-1 No. 18 dated 18.06.2014 total quantity mentioned as

exported is 13,066.51 Kg. (6,675.6 Kg. +6,390.75 Kgl however as per ICES records only 6,675.6 Kg quantity is exported as per Shipping Bill No. 3400619 dated 20.06.2014 against ARE-1 No.18 dated 18.06.2014. Thus as per ICES records quantity of 6390.75 kg. is not exported and the proportionate claim amount of Rs. 1,31,915/- is not admissible to the Respondent. Respondent have mis declared the quantity of export in rebate claim showing full quantity of 13,066.51 Kg., however they have exported only 6,675.6 Kg. Therefore in respect of quantity 6,390.75 Kg. which is actually not exported as per ICES database the rebate claim amount of Rs. 1,31,915/- is not admissible to the Respondent and to that extent the Order in Appeal requires modification.

vi. In view of the facts and circumstances of this case as discussed above, the Commissioner of Service Tax (Appeals) Pune has erred in set asiding Order-In-Original No. R-94/CEX/2015-16 dated 28.10.2015. Consequentially the Order in Appeal No. PUN-SV TAX-000-APP-011-16-17 dated 05.04.2016 passed by the Commissioner of Service Tax (Appeals) Pune is not legal and proper and hence needs to be set aside for the portion of goods which were not exported.

vii. In view of above, applicant requested to modify the order in appeal to so as to the rebate claim of Rs. 1,31,915/- out of the total rebate of Rs. 2,69,707/- allowed by the Appellate Authority.

4. Respondent vide letter dated 15.02.2017 has submitted their reply in their defense as :

i. When the goods covered by ARE 1 No. 18 dated 18.6.2014 total quantity of goods exported is 13066.51 Kgs (consisting of 6675.6 Kgs + 6390.75 Kgs) has been exported under a single Shipping Bill No. 3400619 dated 20.06.2014 (Copy attached) which physical export of said goods are also supported by Bill of lading No.MU1450008970 dated 23.06.2014 (copy enclosed) both of such vital documents indicates export of 13066.51 Kgs and also admittedly the Divisional

Assistant Commissioner C.Excise has reported that as per ARE 1 No. 18 dated 18.6.2014 total quantity mentioned as exported is 13066.51 Kgs (6675.6 Kg + 6390.75 Kg) (refer para 3.5 of revision application), it is strange that in ICES records only 6676.6 kg stands recorded as exported as per Shipping Bill No. 3400619 dated 20.6.2014 against ARE 1 No. 18 dated 18.6.2014.

ii. it is a sheer possible mistake and an error in recording of the actual export quantity and when part goods of 6676.6 kg stands recorded as exported as per Shipping Bill No. 3400619 dated 20.6.2014 against ARE 1 No. 18 dated 18.6.2014, there is no question of balance quantity of 6390.75 Kgs having not been physically exported, which is also covered by Shipping Bill No. 3400619 dated 20.6.2014 against ARE 1 No. 18 dated 18.6.2014 and present Respondent beg to submit that it is only a sheer clerical error from the system department having not posted the said entry in ICES records, which needs to be checked by the department by making a written reference and provide a confirmation from the said department as to ascertain the factual position.

iii. It is also important to note that the Respondent has already received inward foreign remittance and the Bank realization certificate in this regard for the receipt of foreign inward remittance for the entire quantity of 13066.51 Kgs (consisting of 6675.6 Kgs + 6390.75 Kgs) exported to the customer M/s Milco Pvt. Ltd. located at Sri Lanka is also attached with the working of such inward remittance.

iv. In view of above, Respondent requested to allow the full refund amount and set aside the instant revision application filed by the Department.

5. Personal hearing in the matter was fixed on 05.07.2022, Mr. Sambasiva Rao, Assistant Commissioner appeared online on behalf of the Applicant. He submitted that ARE-1 & ARE-2 was not submitted. He further mentioned that Shipping Bill for export mentions only part quantity, therefore, rebate should be accordingly restricted, even otherwise.

6. 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.

7. On perusal of the records, Government finds that Applicant claimed that there is mismatch in quantity of goods exported and the quantity mentioned in the ARE-1 by the Respondent and therefore, requested to set aside the rebate claim for the portion of goods which were not exported.

8. 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.

9. 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.

10. Government notes that the duty payment character of the goods is not in dispute. The only contention of the Applicant is that as per ICES records only 6,675.6 Kg quantity is exported against the total quantity 13,066.51 Kg. (6,675.6 Kg. +6,390.75 Kg) as mentioned in ARE-1 No. 18 dated 18.06.2014. In this regard, Government finds that the Respondent in their reply has submitted a copy of shipping bill and bill of lading. Shipping Bill No. 3400619 dated 20.06.2014 duly signed and endorsed by the Custom Authorities clearly indicates that the total quantity of goods as mentioned in their ARE-1 has been exported. Furthermore, this quantity co-relates with the quantity mentioned in their Bill of Lading also. Both these documents clearly established that the total quantity of goods as mentioned in ARE-1

No. 18 dated 18.06.2014 has been exported by the Respondent. Therefore, Government is of the view that the respondent cannot be held responsible for the technical errors at the end of the Department.

11. With regard to the argument that Respondent have not submitted the original and duplicate copies of the ARE-1 which is a mandatory requirement, Government, holds that non-submission of copy of ARE-1 form by the Respondent should not result in the deprival 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.

12. 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.

13. 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"

14. 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.

15. In view of above, the Government holds that since the export of duty paid goods is not in dispute, the rebate claim in question cannot be denied merely on technical/procedural lapses. Government therefore upholds the impugned Order-in-Appeal No. -PUN-SVTAX-000-APP-011-16-17 dated 05.04.2016.

16. Revision application is disposed off in above terms.

(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 989 /2022-CEX (WZ) /ASRA/Mumbai Dated 20.10.2022

To,

1. M/s. Parakh Agro Indutries Ltd. Situated at GAT No. 45/1,2,3 BhandgaonYawat, Tal. Daund, Pune-412214
2. The Principal Commissioner CGST & CX, Pune III , 41/A, ICE House, Opp Wadia College, Sassoon Road, Pune-411001.

Copy to:

1. The Commissioner of Service Tax(Appeals),Pune , F-wing, 3rd Floor, ICE House, Sassoon Road, Pune-411001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.